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October 8, 1954
Letter Opinion
No. 54-235-L

Mr. C. Stanley Clegg, Secretary
Arizona State Board of
Funeral Directors and Embalmers
333 West Adams Street
Phoenix, Arizona

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ARIZONA ATTORNEY GENERAL

Re: The right of a funeral director
or embalmer to sell life insurance.

Dear Mr. Clegg:

We have your letter of September 28, 1954, wherein you state that an individual in the city of Safford, who has been engaged in the insurance business for several years selling legal reserve insurance is, at the present time, a funeral director and has entered into the mortuary business. You then ask our opinion as to whether or not this in any way conflicts with Rule 13 of the Arizona State Board of Funeral Directors and Embalmers.

Rule 13 provides:

"No embalmer, funeral director or assistant funeral director shall directly or indirectly engage in the act of selling and servicing of insurance or contracts of the burial or funeral benefit type and the collection of premiums and assessments thereon by embalmers, funeral directors and assistant funeral directors."

In a telephone conversation you likewise asked what power the State Board of Funeral Directors and Embalmers had to make rules and regulations.

Section 67-2233, A.C.A. 1939, as amended, provides in part:

"67-2233. Duties and powers of board.---* * *

(b) The board shall adopt rules and regulations not inconsistent with the provisions of this act, which shall be uniform in

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application and effect, for the practice of funeral directing and embalming, which rules and regulations shall be binding upon all funeral directors, embalmers, and apprentice embalmers."

* * * * *

As stated in the statute, the Board has power to adopt rules and regulations not inconsistent with the provisions of the Funeral Directors and Embalmers Act. You may not legislate on matters not covered by the Act. In other words, you may not adopt rules and regulations which have no statutory authorization, but are limited in your rule making power, to adopting rules and regulations to promote the purpose and spirit of the legislature and carry it into effect.

On April 20, 1954, this office wrote an opinion, No. 54-110-L, approving Rule No. 13 as being a proper rule promulgated under your rule making power.

In answer to your question as to whether or not a funeral director may sell life insurance, the question that immediately confronts us is what is meant by the term burial insurance or a funeral benefit contract, as used in Rule 13.

In 44 C.J.S. on page 494, Section 48, burial insurance is defined as follows:

"§ 48. Other kinds of Insurance

* * * * *

BURIAL INSURANCE is a contract based on a legal consideration whereby the obligor undertakes to furnish the obligee, or one of the latter's near relatives, at death, a burial reasonably worth a fixed sum." (*Italics capitalized*)

* * * * *

This same definition on burial insurance is set forth in Volume 5 of Words and Phrases at page 962.

In the case of PETERSON vs. SMITH, 196 So. 505, it is stated:

"In 1 Joyce on Insurance, 2d Ed., p. 87, it is said: 'Burial insurance is a contract based upon a legal consideration, whereby the obligor undertakes to furnish the obligee, or one of the latter's near relatives, at death, a burial reasonably worth a fixed sum. It is a valid contract, and constitutes life insurance.' * * *"

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In most cases it has been held that contracts of burial or funeral benefit type constitute life insurance. The converse is not true. All life insurance contracts, even though the amount of the policy is only \$500.00 or \$1,000.00, have not been held to be burial insurance. To constitute burial insurance, it seems that the policy must either name the funeral director or mortician as the beneficiary or the policy must specifically state that the proceeds are to be used for funeral or burial purposes.

An ordinary policy of insurance, even though the amount be small, is not to be considered a burial policy unless the proceeds are specifically designated to be used for such purpose. In this specific case, if the individual selling insurance is selling burial insurance, he then, of course, would be violating Rule 13, but, if he is only selling regular life insurance, it is our opinion that he would not be violating Rule 13 of the State Board of Funeral Directors and Embalmers.

We trust that the foregoing satisfactorily answers your questions.

Very truly yours,

KENT A. BLAKE
Special Assistant to
The Attorney General

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